

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

03-CR-6033L

v.

CHAD MARKS,

Defendant.

Defendant Chad Marks ("Marks") has recently filed a post-jury-verdict motion to compel the Government to allow Marks the benefit of certain proposed plea agreements that had apparently been discussed prior the trial. The parties are now apparently at issue as to what occurred relative to these agreements.

By letter dated November 28, 2006, the prosecutor requested leave to listen to tape recordings of court proceedings involving Marks before United States Magistrate Judge Marian W. Payson. There were apparently two proceedings, on March 16 and August 30, 2004, during which Magistrate Judge Payson heard Marks' concerns about the court proceedings and his attorney, Donald Thompson. At the direction of Magistrate Judge Payson, the prosecutor was excused from the courtroom during such discussions.

In light of the pending motion, the prosecutor seeks leave to listen now to the above-referenced proceedings to determine if there were discussions relating to plea agreements which

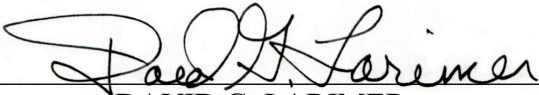
might be germane to the Government's defense of the recently filed motion. By letter dated November 29, 2006, Marks' trial counsel objects to the Government's request.

I grant the Government's request to listen to the referenced proceedings and, if necessary, to order a transcript of the relevant portions, at this point, though, for the Court and attorneys only. I see no good reason not to allow the Government the relief it seeks. The purpose for excusing Government counsel from discussions between a defendant and his counsel before trial are no longer relevant. The trial has concluded and there are no longer issues concerning strategy or the Government's taking advantage of disputes between the defendant and his counsel. These conversations among Magistrate Judge Payson, Marks and his lawyer may well touch upon some of the issues now presented to this Court by virtue of Marks' post-verdict motion. Marks has certainly put in issue, by virtue of the pending motion, what his state of mind was relative to the proposed plea agreements and information relative to that may well have been discussed, in part, before Magistrate Judge Payson.

CONCLUSION

The Government's request to listen to transcripts of proceedings before United States Magistrate Judge Marian W. Payson on March 16 and August 30, 2004, is granted and either the Government or defense counsel may order transcripts of same, but for Court and attorneys' eyes only.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
November 30, 2006.